

19-2-101. Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program.

- (1) This chapter is known as the "Air Conservation Act."
- (2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.
- (3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality.
- (4) The purpose of this chapter is to:
 - (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
 - (b) provide for an appropriate distribution of responsibilities among the state and local units of government;
 - (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
 - (d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-102. Definitions.

As used in this chapter:

- (1) "Air contaminant" means any particulate matter or any gas, vapor, suspended solid, or any combination of them, excluding steam and water vapors.
- (2) "Air contaminant source" means all sources of emission of air contaminants whether privately or publicly owned or operated.
- (3) "Air pollution" means the presence in the ambient air of one or more air contaminants in the quantities and duration and under conditions and circumstances as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the rules adopted by the board.
- (4) "Ambient air" means the surrounding or outside air.
- (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.
- (6) "Asbestos-containing material" means any material containing more than 1% asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos.
- (7) "Asbestos inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material.

- (8) (a) "Board" means the Air Quality Board.
- (b) "Board" means, as used in Sections 19-2-123 through 19-2-126, the Air Quality Board or the Water Quality Board.
- (9) "Clean school bus" has the same meaning as defined in 42 U.S.C. Sec. 16091.
- (10) "Director" means the director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).
- (12) (a) "Facility" means machinery, equipment, structures, or any part or accessories of them, installed or acquired for the primary purpose of controlling or disposing of air pollution.
- (b) "Facility" does not include an air conditioner, fan, or other similar facility for the comfort of personnel.
- (13) "Friable asbestos-containing material" means any material containing more than 1% asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce to powder when dry.
- (14) "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard.
- (15) (a) "Pollution control facility" or "facility" means, as used in Sections 19-2-123 through 19-2-126, any land, structure, building, installation, excavation, machinery, equipment, or device, or any addition to, reconstruction, replacement or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment, or device reasonably used, erected, constructed, acquired, or installed by any person if the primary purpose of the use, erection, construction, acquisition, or installation is the prevention, control, or reduction of air or water pollution by:
- (i) the disposal or elimination of or redesign to eliminate waste and the use of treatment works for industrial waste as defined in Title 19, Chapter 5, Water Quality Act; or
- (ii) the disposal, elimination, or reduction of or redesign to eliminate or reduce air contaminants or air pollution or air contamination sources and the use of air cleaning devices.
- (b) "Pollution control facility" or "facility" does not include air conditioners, septic tanks, or other facilities for human waste, nor any property installed, constructed, or used for the moving of sewage to the collection facilities of a public or quasi-public sewerage system.

Amended by Chapter 360, 2012 General Session

19-2-103. Members of board -- Appointment -- Terms -- Organization -- Per diem and expenses.

- (1) The board consists of the following nine members:
- (a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

- (i) the executive director; or
- (ii) an employee of the department designated by the executive director; and
- (b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

- (i) one representative who:
 - (A) is not connected with industry;
 - (B) is an expert in air quality matters; and
 - (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;
- (ii) two government representatives who do not represent the federal government;
- (iii) one representative from the mining industry;
- (iv) one representative from the fuels industry;
- (v) one representative from the manufacturing industry;
- (vi) one representative from the public who represents:
 - (A) an environmental nongovernmental organization; or
 - (B) a nongovernmental organization that represents community interests and does not represent industry interests; and
- (vii) one representative from the public who is trained and experienced in public health.

- (2) A member of the board shall:
 - (a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
 - (b) be a resident of Utah;
 - (c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
 - (d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

- (3) No more than five of the appointed members of the board shall belong to the same political party.

- (4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.

- (5) (a) Members shall be appointed for a term of four years.
- (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

- (c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.

- (ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.

- (6) A member may serve more than one term.

- (7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.

- (8) When a vacancy occurs in the membership for any reason, the replacement

shall be appointed for the unexpired term.

(9) The board shall elect annually a chair and a vice chair from its members.

(10) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.

(c) Three days' notice shall be given to each member of the board before any meeting.

(11) Five members constitute a quorum at any meeting, and the action of a majority of members present is the action of the board.

(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 360, 2012 General Session

19-2-104. Powers of board.

(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source;

(b) establishing air quality standards;

(c) requiring persons engaged in operations which result in air pollution to:

(i) install, maintain, and use emission monitoring devices, as the board finds necessary;

(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant; and

(iii) provide access to records relating to emissions which cause or contribute to air pollution;

(d) (i) implementing:

(A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

(B) 40 C.F.R. Part 763, Asbestos; and

(C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and

(ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;

(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;

(g) establishing requirements for county emissions inspection and maintenance

programs after obtaining agreement from the counties that would be affected by the requirements;

(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2); and

(i) implementing lead-based paint remediation training, certification, and performance requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

(2) When implementing Subsection (1)(h) the board shall take into consideration:

(a) the impact of the business on overall air quality; and

(b) the need of the business to use automobiles in order to carry out its business purposes.

(3) (a) The board may:

(i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;

(ii) order the director to:

(A) issue orders necessary to enforce the provisions of this chapter;

(B) enforce the orders by appropriate administrative and judicial proceedings; or

(C) institute judicial proceedings to secure compliance with this chapter; or

(iii) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, or interested persons or groups.

(b) The board shall:

(i) to ensure compliance with applicable statutes and regulations:

(A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of \$25,000 or more; and

(B) approve or disapprove the settlement;

(ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(iii) require the owner and operator of each new source which directly emits or has the potential to emit 100 tons per year or more of any air contaminant or the owner or operator of each existing source which by modification will increase emissions or have the potential of increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee sufficient to cover the reasonable costs of:

(A) reviewing and acting upon the notice required under Section 19-2-108; and

(B) implementing and enforcing requirements placed on the sources by any approval order issued pursuant to notice, not including any court costs associated with any enforcement action;

(iv) meet the requirements of federal air pollution laws;

(v) by rule, establish work practice, certification, and clearance air sampling

requirements for persons who:

(A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:

(I) the contract work is done on a site other than a residential property with four or fewer units; or

(II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;

(B) conduct work described in Subsection (3)(b)(v)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;

(C) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

(D) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

(vi) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as inspectors, management planners, abatement project designers, asbestos abatement contractors and supervisors, or asbestos abatement workers;

(vii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of persons who, prior to establishment of the certification requirements, had received relevant asbestos training, as defined by rule, and had acquired at least 1,000 hours of experience as project monitors;

(viii) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;

(ix) establish a program to certify private sector air quality permitting professionals (AQPP), as described in Section 19-2-109.5;

(x) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as inspectors, risk assessors, supervisors, project designers, or abatement workers; and

(xi) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.

(4) Any rules adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.

(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.

(6) (a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:

(i) the property's construction was completed before January 1, 1981; or

(ii) the testing is for:

- (A) a sprayed acoustical ceiling;
- (B) transite siding;
- (C) vinyl floor tile;
- (D) thermal-system insulation or tape on a duct or furnace; or
- (E) vermiculite type insulation materials.
- (b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(v) if:
 - (i) a sample from the property is tested for asbestos; and
 - (ii) the sample contains asbestos measuring greater than 1%.
- (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:
 - (a) a permit;
 - (b) a license;
 - (c) a registration;
 - (d) a certification; or
 - (e) another administrative authorization made by the director.
- (8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.
- (9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

Amended by Chapter 43, 2012 General Session
Amended by Chapter 360, 2012 General Session

19-2-105. Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 including issues relating to:

- (1) the implementation of a standardized inspection and maintenance program;
- (2) out-of-state registration of vehicles used in Utah;
- (3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;
- (4) use of the farm truck exemption;
- (5) mechanic training programs;
- (6) emissions standards; and
- (7) emissions waivers.

Amended by Chapter 360, 2012 General Session

19-2-105.3. Clean fuel requirements for fleets.

- (1) As used in this section:
 - (a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
 - (b) "Clean fuel" means:

- (i) propane, compressed natural gas, or electricity;
- (ii) other fuel the Air Quality Board created in Title 19, Chapter 2, Air Conservation Act, determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and
- (iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.

(c) "Fleet" means 10 or more vehicles:

- (i) owned or operated by a single entity as defined by board rule; and
- (ii) capable of being fueled or that are fueled at a central location.

(d) "Fleet" does not include motor vehicles that are:

- (i) held for lease or rental to the general public;
- (ii) held for sale or used as demonstration vehicles by motor vehicle dealers;
- (iii) used by motor vehicle manufacturers for product evaluations or tests;
- (iv) authorized emergency vehicles as defined in Section 41-6a-102;
- (v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;
- (vi) special mobile equipment as defined in Section 41-1a-102;
- (vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000

pounds;

(viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at their employment, and not practicably fueled at a central location;

(ix) owned, operated, or leased by public transit districts; or

(x) exempted by board rule.

(2) (a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards, the board may by rule, subject to Subsection (2)(c), require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

(i) necessary to demonstrate attainment of the national ambient air quality standards in any area where they are required; and

(ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.

(b) State implementation plans developed prior to July 1, 1995, may require fleets to use clean fuels no earlier than July 1, 1995, unless the board determines fleet use of clean fuels is necessary prior to July 1, 1995, to demonstrate attainment of the national ambient air quality standards in any area by an attainment date established by federal law.

(c) The board may not require more than 50% of those trucks in a fleet that are heavy duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than 26,000 pounds to convert to clean fuels under Subsection (2)(b).

(d) A vehicle retrofit to operate on compressed natural gas in accordance with Section 19-1-406 qualifies as a clean fuel vehicle under this section.

(3) (a) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule, subject to Subsection (3)(b), require fleets in specified geographical areas to use clean fuels if the board determines

fleet use of clean fuels is:

- (i) necessary to demonstrate maintenance of the national ambient air quality standards in any area where they are required; and
 - (ii) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.
- (b) Under Subsection (3)(a) the board may require no more than:
- (i) 30% of a fleet to use clean fuels before January 1, 1998;
 - (ii) 50% of a fleet to use clean fuels before January 1, 1999; and
 - (iii) 70% of a fleet to use clean fuels before January 1, 2000.
- (c) The board may not require more than 50% of those trucks in a fleet that are heavy duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than 26,000 pounds to convert to clean fuels under Subsection (3)(b).
- (4) Rules the board makes under this section may include:
- (a) dates by which fleets are required to convert to clean fuels under the provisions of this section;
 - (b) definitions of fleet owners or operators;
 - (c) definitions of vehicles exempted from this section by rule;
 - (d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and
 - (e) certification fees for installers, established under Section 63J-1-504.
- (5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board.

Amended by Chapter 236, 2010 General Session

19-2-106. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board makes for the purpose of administering a program under the federal Clean Air Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-107. Director -- Appointment -- Powers.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) (a) The director shall:

- (i) prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah;
 - (ii) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;
 - (iii) review plans, specifications, or other data relative to pollution control systems or any part of the systems provided in this chapter;
 - (iv) under the direction of the executive director, represent the state in all matters relating to interstate air pollution, including interstate compacts and similar agreements;
 - (v) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;
 - (vi) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;
 - (vii) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consulting assistance to them;
 - (viii) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;
 - (ix) monitor the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;
 - (x) collect and disseminate information relating to air contamination and air pollution and conduct educational and training programs relating to air contamination and air pollution;
 - (xi) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Section 7420;
 - (xii) comply with the requirements of federal air pollution laws;
 - (xiii) subject to the provisions of this chapter, enforce rules through the issuance of orders, including:
 - (A) prohibiting or abating discharges of wastes affecting ambient air;
 - (B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or
 - (C) adopting other remedial measures to prevent, control, or abate air pollution;and
 - (xiv) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.
- (b) The director may:
 - (i) employ full-time employees necessary to carry out this chapter;
 - (ii) subject to the provisions of this chapter, authorize any employee or representative of the department to enter at reasonable time and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution;
 - (iii) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and its causes, effects, prevention, abatement,

and control, as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(iv) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;

(v) cooperate with studies and research relating to air pollution and its control, abatement, and prevention;

(vi) subject to Subsection (3), upon request, consult concerning the following with any person proposing to construct, install, or otherwise acquire an air contaminant source in Utah:

(A) the efficacy of any proposed control device or proposed control system for the source; or

(B) the air pollution problem that may be related to the source, device, or system;

(vii) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;

(viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or

(ix) as authorized by the board and subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes the fact of construction, installation, or acquisition of any facility, land, building, machinery, or equipment or any part of them, in conformity with this chapter.

(3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the requirements of this chapter, the rules adopted under this chapter, or any other provision of law.

Amended by Chapter 360, 2012 General Session

19-2-108. Notice of construction or modification of installations required -- Authority of director to prohibit construction -- Hearings -- Limitations on authority of director -- Inspections authorized.

(1) Notice shall be given to the director by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged, so that the installation may be expected to be a source or indirect source of air pollution, or by any person planning to install an air cleaning device or other equipment intended to control emission of air contaminants.

(2) (a) (i) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air contaminant source or indirect source, the submission of plans, specifications, and other information as he finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter.

(ii) Plan approval for an indirect source may be delegated by the director to a

local authority when requested and upon assurance that the local authority has and will maintain sufficient expertise to insure that the planned installation will meet the requirements established by law.

(b) If within 90 days after the receipt of plans, specifications, or other information required under this subsection, the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information, he shall issue an order prohibiting the construction, installation, or establishment of the air contaminant source or sources in whole or in part.

(3) In addition to any other remedies, any person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, and prior to invoking any such other remedies shall, upon request, in accordance with the rules of the department, be entitled to a permit review adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.

(5) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

(6) (a) Any authorized officer, employee, or representative of the director may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, modified, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under it.

(b) (i) A person may not refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.

(ii) A person may not obstruct, hamper, or interfere with any inspection.

(c) If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Amended by Chapter 333, 2012 General Session

Amended by Chapter 360, 2012 General Session

19-2-109. Air quality standards -- Hearings on adoption -- Orders of director -- Adoption of emission control requirements.

(1) (a) The board, in adopting standards of quality for ambient air, shall conduct public hearings.

(b) Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards apply and the time, date, and place of the hearing.

(c) The notice shall be:

(i) (A) published at least twice in any newspaper of general circulation in the

area affected; and

(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 20 days before the public hearing; and

(ii) mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the director has reason to believe will be affected by the standards.

(d) The adoption of air quality standards or any modification or changes to air quality standards shall be by order of the director following formal action of the board with respect to the standards.

(e) The order shall be published:

(i) in a newspaper of general circulation in the area affected; and

(ii) as required in Section 45-1-101.

(2) (a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local conditions.

(b) In adopting these requirements, the board shall give notice and conduct public hearings in accordance with the requirements in Subsection (1).

Amended by Chapter 360, 2012 General Session

19-2-109.1. Operating permit required -- Emissions fee -- Implementation.

(1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

(a) "EPA" means the federal Environmental Protection Agency.

(b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

(c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

(d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.

(e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

(2) (a) A person may not operate any source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.

(b) A person is not required to submit an operating permit application until the governor has submitted an operating permit program to the EPA.

(c) Any operating permit issued under this section may not become effective until the day after the EPA issues approval of the permit program or November 15, 1995, whichever occurs first.

(3) (a) Operating permits issued under this section shall be for a period of five years unless the director makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.

(b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.

(c) The director shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.

(d) The director may terminate, modify, revoke, or reissue an operating permit for cause.

(4) (a) The board shall establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit. The emissions fee established under this section is in addition to fees assessed under Section 19-2-108 for issuance of an approval order.

(b) In establishing the fee the board shall comply with the provisions of Section 63J-1-504 that require a public hearing and require the established fee to be submitted to the Legislature for its approval as part of the department's annual appropriations request.

(c) The fee shall cover all reasonable direct and indirect costs required to develop and administer the program and the small business assistance program established under Section 19-2-109.2. The director shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this Subsection (4).

(d) The fee shall be established uniformly for all sources required to obtain an operating permit under the program and for all regulated pollutants.

(e) The fee may not be assessed for emissions of any regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.

(f) An emissions fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(5) Emissions fees accrued on and after July 1, 1993, but before issuance of an operating permit, shall be based on the most recent emissions inventory, unless a source elects before July 1, 1992, to base the fee on allowable emissions, if applicable for a regulated pollutant.

(6) After an operating permit is issued the emissions fee shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.

(7) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the director may:

(a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or

(b) revoke the operating permit.

(8) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

(a) The owner or operator shall pay the fee under protest prior to being entitled

to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to contest the fee or penalty under this section.

(b) A request for a hearing under this Subsection (8) shall be made after payment of the emissions fee and within six months after the emissions fee was due.

(9) To reinstate an operating permit revoked under Subsection (7) the owner or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

(10) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.

(11) Failure of the director to act on any operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the director to take action on the permit or its renewal without additional delay:

- (a) the applicant;
- (b) any person who participated in the public comment process; or
- (c) any other person who could obtain judicial review of that action under applicable law.

Amended by Chapter 360, 2012 General Session

Amended by Chapter 369, 2012 General Session

19-2-109.2. Small business assistance program.

(1) The board shall establish a small business stationary source technical and environmental compliance assistance program that conforms with Title V of the 1990 Clean Air Act to assist small businesses to comply with state and federal air pollution laws.

(2) There is created the Compliance Advisory Panel to advise and monitor the program created in Subsection (1). The seven panel members are:

(a) two members who are not owners or representatives of owners of small business stationary air pollution sources, selected by the governor to represent the general public;

(b) four members who are owners or who represent owners of small business stationary sources selected by leadership of the Utah Legislature as follows:

- (i) one member selected by the majority leader of the Senate;
- (ii) one member selected by the minority leader of the Senate;
- (iii) one member selected by the majority leader of the House of Representatives; and

(iv) one member selected by the minority leader of the House of Representatives; and

(c) one member selected by the executive director to represent the Division of Air Quality, Department of Environmental Quality.

(3) (a) Except as required by Subsection (3)(b), as terms of current panel

members expire, the department shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of panel members are staggered so that approximately half of the panel is appointed every two years.

(4) Members may serve more than one term.

(5) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) Every two years, the panel shall elect a chair from its members.

(8) (a) The panel shall meet as necessary to carry out its duties. Meetings may be called by the chair, the director, or upon written request of three of the members of the panel.

(b) Three days' notice shall be given to each member of the panel prior to a meeting.

(9) Four members constitute a quorum at any meeting, and the action of the majority of members present is the action of the panel.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 360, 2012 General Session

19-2-109.3. Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-2-109.5. Private sector air quality permitting professionals certification program.

(1) As used in this section, "AQPP" means an air quality permitting professional.

(2) The board may establish a program to certify private sector AQPPs, including consultants and employees of companies that may seek air quality permits from the division. Any program established under this section shall include:

(a) a training program established and operated by the department, which describes and explains the state law and rules regarding the air quality permit application and approval procedure under this chapter;

(b) the requirement to pass an exam to measure qualifications of AQPP

applicants;

(c) an option for certification of an AQPP by passing the exam without undergoing any training required under the program;

(d) an application process, including a fee established under Section 63J-1-504 that covers the costs of the training, testing, and application process and the department's maintenance of a list of certified AQPPs;

(e) certification of qualified AQPP applicants;

(f) maintenance by the department of a current list of certified AQPPs, which is available to the public;

(g) procedures for the expedited review by the department of air quality permit applications submitted by certified AQPPs; and

(h) professional standards for AQPPs.

(3) The board may not require AQPP certification as a condition of preparing or submitting a notice of intent or operating permit application under this chapter.

(4) Any program under this section shall provide for revocation of any certification issued under this section if the department determines, through an administrative hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, that the AQPP:

(a) knowingly or negligently submitted false information or data as part of an air quality permit application;

(b) prepared more than three air quality permit applications in one calendar year in a manner that each did not substantially comply with department application requirements; or

(c) prepared any air quality permit application in violation of the professional standards defined by department rule.

Amended by Chapter 183, 2009 General Session

Amended by Chapter 377, 2009 General Session

19-2-110. Violations -- Notice to violator -- Corrective action orders -- Conference, conciliation, and persuasion by director -- Hearings.

(1) Whenever the director has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, the director may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.

(2) Nothing in this chapter prevents the director from making efforts to obtain voluntary compliance through warning, conference, conciliation, persuasion, or other appropriate means.

(3) Hearings may be held before an administrative law judge as provided by Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-2-112. Generalized condition of air pollution creating emergency --

Sources causing imminent danger to health -- Powers of executive director -- Declaration of emergency.

(1) (a) Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants.

(b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.

(c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.

(2) (a) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, the executive director may commence adjudicative proceedings under Section 63G-4-502.

(b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may conduct the emergency adjudicative proceeding in place of an administrative law judge.

(3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

Amended by Chapter 333, 2012 General Session

19-2-113. Variances -- Judicial review.

(1) (a) Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;

(b) (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their

extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.

(4) (a) Any variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5) (a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air contaminant source is situated.

(6) (a) The board may review any variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to any person or property.

Amended by Chapter 297, 2011 General Session

19-2-114. Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of any rules made under it:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

Amended by Chapter 86, 1991 General Session

19-2-115. Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

(2) (a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for each violation.

(b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

(c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.

(3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person knowingly violates any of the following under this chapter:

- (a) an applicable standard or limitation;
- (b) a permit condition; or
- (c) a fee or filing requirement.

(4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

- (a) makes any false material statement, representation, or certification, in any notice or report required by permit; or
- (b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.

(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.

(6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.

(7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the director that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation in the case of the first offense, and not more than \$50,000 per day of violation in the case of subsequent offenses.

(8) (a) As used in this section:

- (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42

U.S.C. Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

(ii) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with criminal negligence:

(A) releases into the ambient air any hazardous air pollutant; and

(B) places another person in imminent danger of death or serious bodily injury.

(ii) As used in this Subsection (8)(b), "person" does not include an employee who is carrying out the employee's normal activities and who is not a part of senior management personnel or a corporate officer.

(c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

(i) knowingly releases into the ambient air any hazardous air pollutant; and

(ii) knows at the time that the person is placing another person in imminent danger of death or serious bodily injury.

(d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than \$1,000,000.

(e) (i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and shall prove that defense by a preponderance of the

evidence.

(9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

- (i) define qualifying environmental enforcement activities; and
- (ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-2-116. Injunction or other remedies to prevent violations -- Civil actions not abridged.

(1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of the rules adopted under it or any orders made under it by injunction or other appropriate remedy. The director has the power to institute and maintain in the name of the state any and all enforcement proceedings.

(2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding for this purpose.

(3) (a) In addition to any other remedy created in this chapter, the director may initiate an action for appropriate injunctive relief:

- (i) upon failure of any person to comply with:
 - (A) any provision of this chapter;
 - (B) any rule adopted under this chapter; or
 - (C) any final order made by the board, the director, or the executive director;

and

- (ii) when it appears necessary for the protection of health and welfare.
- (b) The attorney general shall bring injunctive relief actions on request.
- (c) A bond is not required.

Amended by Chapter 360, 2012 General Session

19-2-117. Attorney general as legal advisor to board -- Duties of attorney general and county attorneys.

(1) The attorney general is the legal advisor to the board and the director and shall defend them or any of them in all actions or proceedings brought against them or any of them.

(2) The county attorney in the county in which a cause of action arises may, upon request of the board or the director, bring any action, civil or criminal, to abate a condition which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the standards, orders, or rules of the board or the director issued under

this chapter.

(3) The director may bring any action and be represented by the attorney general.

(4) In the event any person fails to comply with a cease and desist order of the board or the director that is not subject to a stay pending administrative or judicial review, the director may initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order.

Amended by Chapter 360, 2012 General Session

19-2-118. Violation of injunction evidence of contempt.

Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-119. Civil or criminal remedies not excluded -- Actionable rights under chapter -- No liability for acts of God or other catastrophes.

(1) Existing civil or criminal remedies for any wrongful action which is a violation of any part of the law are not excluded by this chapter.

(2) Persons other than the state or the board do not acquire actionable rights by virtue of this chapter.

(3) The liabilities imposed for violation of this chapter are not imposed for any violation caused by an act of God, war, strike, riot, or other catastrophe.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-120. Information required of owners or operators of air contaminant sources.

The owner or operator of any stationary air contaminant source in the state shall furnish to the director the reports required by rules made in accordance with Section 19-2-104 and any other information the director finds necessary to determine whether the source is in compliance with state and federal regulations and standards. The information shall be correlated with applicable emission standards or limitations and shall be available to the public during normal business hours at the office of the division.

Amended by Chapter 360, 2012 General Session

19-2-121. Ordinances of political subdivisions authorized.

Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-122. Cooperative agreements between political subdivisions and

department.

(1) Any political subdivision of the state may enter into and perform with other political subdivisions of the state or with the department contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.

(2) The agreements may provide for an agency to:

- (a) supervise and operate an air pollution program;
- (b) prescribe, subject to the approval of the board, the agency's powers and duties; and
- (c) fix the compensation of the agency's members and employees.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-123. Tax relief to encourage investment in facilities -- Sales and use tax exemption.

(1) It is in the public interest of the state to encourage, through tax relief, investment in pollution control and pollution elimination facilities while at the same time making and keeping the state an attractive location for continued industrial development, including the expansion of existing plants, thereby increasing employment and payrolls and upgrading the natural resources of the state.

(2) All materials and equipment purchased, leased, or otherwise procured and services utilized for the construction or installation in a pollution control facility are exempt from sales and use taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, upon obtaining a certification of pollution control facility from the board.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-124. Application for certification of pollution control facility -- Refunds -- Interest.

(1) (a) A person who qualifies under Subsection (2) may apply to the board for certification of a pollution control facility erected, constructed, or installed, or to be erected, constructed, or installed in the state.

(b) The person may file the application after:

- (i) a firm construction contract has been entered; or
- (ii) construction has commenced.

(2) (a) (i) A person who applies under Subsection (1) shall be:

(A) the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution;

(B) a person that, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property; or

(C) a person that operates a pollution control facility pursuant to an agreement with an owner described in Subsection (2)(a)(i)(A) or a person described in Subsection (2)(a)(i)(B).

(ii) For purposes of this Subsection (2), "owner" includes a contract purchaser.

(b) The facility shall be owned, operated, or leased during a part of the tax year in which the exemption is claimed.

(c) A person who obtains certification for a pollution control facility may claim an exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104.

(d) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that:

(i) is not certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the board subsequently certifies the pollution control facility;

(B) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11), except for the certification requirement; and

(C) the person files a claim for the refund with the State Tax Commission within the lesser of:

(I) three years after the day on which the pollution control facility is certified under Section 19-2-125; or

(II) six years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) is certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11); and

(B) the person files a claim for the refund with the State Tax Commission within three years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was not certified under Section 19-2-125 at the time of the purchase:

(A) within 180 days after the day on which the board certifies the pollution control facility, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning on the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act, for which the person is claiming a refund; or

(B) more than 180 days after the day on which the board certifies the pollution control facility, interest shall be added to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning 30 days after the day on which the person files the claim for a refund under Subsection (2)(d).

(ii) If a person files a claim for a refund of taxes under Subsection (2)(d)(ii) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was certified under Section 19-2-125 at the time of the purchase, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(A) at the rate prescribed in Section 59-1-402; and

(B) beginning 30 days after the day on which the person files a claim for a refund under Subsection (2)(d).

- (3) (a) Each application shall:
 - (i) be in a format prescribed by the board; and
 - (ii) contain:
 - (A) a description of the facility and materials incorporated in the facility;
 - (B) the machinery and equipment;
 - (C) the existing or proposed operational procedure; and
 - (D) a statement of the purpose of pollution prevention, control, or reduction served or to be served by the facility.
- (b) The board may require any further information it finds necessary before issuance of a certificate.

Amended by Chapter 142, 2011 General Session

19-2-125. Action on application for certification.

- (1) (a) The board shall certify the facility if, after consulting with the State Tax Commission, the board finds that:
 - (i) a pollution control facility or a part of a pollution control facility, for which application is made under Section 19-2-124:
 - (A) was or is to be erected, constructed, acquired, or installed; and
 - (B) is designed and is being operated or will operate primarily to prevent, control, or reduce air or water pollution; and
 - (ii) the applicant qualifies under Section 19-2-124.
- (b) If one or more facilities constitute an operational unit, the board may certify those facilities under one certificate.
- (2) (a) The board and the State Tax Commission shall act on an application under Section 19-2-124 before the 120th day after filing.
- (b) Failure of the board and the State Tax Commission to timely act constitutes automatic acceptance of the application and the board shall furnish a certificate to the applicant on demand.

Amended by Chapter 30, 2008 General Session

19-2-126. Revocation of certification -- Grounds -- Procedure.

- (1) (a) The board, after consulting with the State Tax Commission, may revoke the certification issued under Section 19-2-125 of any pollution control facility if it finds that the:
 - (i) certification was obtained by fraud or gross misrepresentation; or
 - (ii) holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary to prevent, control, or reduce air or water pollution as specified in the certificate.
- (b) A shutdown of the facility due to force majeure, including obsolescence, is not cause to revoke certification of any facility.
- (2) (a) The board shall provide notice of the revocation by issuing a notice of agency action.
- (b) The holder of the certificate may obtain judicial review of the revocation.
- (c) The revocation is final and conclusive unless an appeal is taken.

(d) If the revocation is affirmed on appeal, revocation is final on the date notice of revocation was received by the holder.

(3) As soon as a revocation under this section is final, the board shall notify the State Tax Commission of the revocation.

(4) (a) If the certification of a pollution control facility is revoked, all prior tax relief provided to the holder because of the certificate is forfeited.

(b) The State Tax Commission shall collect taxes not paid by the holder because of the tax relief provided the holder to the extent permitted by the applicable statute of limitations.

Amended by Chapter 135, 1994 General Session

19-2-127. Rules for administering certification for tax relief.

In addition to the powers granted it, the board may formulate, amend, or cancel rules establishing procedures for processing and evaluating applications for certification, establishing procedures for the issuance and revocation of certificates, and all other matters pertaining to the board in administering certification for tax relief on pollution control facilities.

Renumbered and Amended by Chapter 112, 1991 General Session